

**SYNOPSIS OF CRIMINAL OPINIONS IN THE MISSISSIPPI SUPREME COURT  
HANDED DOWN MAY 13, 2010**

**Jones v. State**, No. 2009-KA-00039-SCT (Miss. May 13, 2010)

**CRIME:** Murder

**SENTENCE:** Life

**COURT:** Jones County Circuit Court

**TRIAL JUDGE:** Hon. Billy Landrum

**APPELLANT ATTORNEY:** Ben Suber

**APPELLEE ATTORNEY:** Lisa Blount

**DISTRICT ATTORNEY:** Anthony J. Buckley

**DISPOSITION:** Affirmed. Pierce, Justice, for the Court: Waller, C.J., Carlson, P.J., Dickinson, Randolph, Lamar, Kitchens and Chandler, JJ., Concur. Graves, P.J., Concur in Result Only.

**ISSUES:** (1) Whether the *Weathersby* rule applied, (2) whether the weight of the evidence supported deliberate design murder, and (3) whether there was sufficient evidence to support the verdict.

**FACTS:** Andre J. Jones was convicted of the July 17, 2007, murder of Eric Rogers. Earlier that morning, Jones and Rogers were arguing while riding around in a car with several others. Jones left the group, but later rejoined them that evening at Rogers's house. Jones claimed he was standing next to the carport, drinking a beer when he was approached by Rogers, who said that he did not appreciate how Andre had been talking to him. He then swung and knocked Jones to the ground. Rogers got on top of him and hit Andre's head against the ground. When he tried to get in the house, Rogers came out with a knife. The two began "tussling." They both fell to the floor, but Rogers did not get up. Jones grabbed the knife. Vernon Barnes came in and another man to go get his gun. Jones then walked past Barnes and left. Jones stated he dropped the knife and got a ride with friends. Barnes testified Jones and Rogers were ragging on each other throughout the day. That night, Jones continued to rag Rogers. Jones then punched Rogers, who punched back, knocking Jones to the ground. Rogers grabbed him and told him to leave him alone. Rogers then got up and went inside the house. Jones followed. The house was dark, but Jones went into the kitchen. Barnes then saw Jones punching Rogers. He did not actually see the stabbing. He also testified that Jones licked the blood off of the knife as he came outside. Police recovered the knife "around the corner."

**HELD:** Jones claimed the State's only witness who was present during the stabbing could not see what was happening due to the darkness inside the house. He also contends that his version of the events that night was not substantially contradicted by the evidence, and therefore he was entitled to an acquittal as a matter of law. While the testimony of the other witnesses was contradictory in some respects, it materially contradicted Jones's testimony regarding what led up to the stabbing. The physical evidence also materially contradicted Jones, as the blood splatters showed the fight did not occur near the door as Jones claimed.

==>The verdict was not against the weight of the evidence for deliberate design murder. The evidence showed that Jones was the aggressor and instigator throughout the day. There was no provocation from Rogers, and Jones had intent the moment he engaged Rogers in the fight with the knife. The State presented evidence that it was Jones who grabbed the knife once he entered the house, and that he was the aggressor in the attack. Jones had a chance to run away and avoid the fight. Instead, he followed Rogers into the house and engaged him in a knife fight. There was no immediate or reasonable provocation for manslaughter.

==> The evidence was sufficient. There was testimony that Jones was the first person to grab the knife and that he attacked Rogers. The case largely consisted of the State's witnesses' testimony against Jones's testimony. This presented a factual dispute to be resolved by a jury.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62849.pdf>

***Robinson v. State***, No. 2007-CT-02202-SCT (Miss. May 13, 2010)

**CRIME:** Murder

**SENTENCE:** Life

**COURT:** Oktibbeha County Circuit Court

**TRIAL JUDGE:** Hon Lee J. Howard

**APPELLANT ATTORNEY:** Justin Cook, Nicole Clinkscales

**APPELLEE ATTORNEY:** Laura Tedder

**DISTRICT ATTORNEY:** Forrest Allgood

**DISPOSITION:** COA reversed, conviction reversed and remanded. Randolph, Justice, for the Court: Waller, C.J., Carlson and Graves, P.JJ., Dickinson, Lamar, Kitchens, Chandler and Pierce, JJ., Concur.

**ISSUES:** Whether the COA erred in finding the defendant's subsequent testimony cured the error of submitting other crimes evidence in violation of MRE 404(b).

**FACTS:** Floyd Robinson was indicted for the murder of his on-again, off-again girlfriend, Bridget Moore. Evidence at the scene indicated a struggle with broken fingernails and blood stains around the home. Robinson signed a statement that Moore was accidentally killed in a struggle over a gun when the gun discharged. He said that Moore sat on the steps to her home and they talked after the shooting. Dr Stephen Hayne testified that the gun was fired approximately 12 to 18 inches away from Moore's body and that she would have lost consciousness 3 to 15 seconds after being shot. Robinson was arrested that evening and was subjected to a 4½ hour interrogation, which included allegations of domestic violence against Robinson by Moore and another former girlfriend, Marilyn McKinney. The trial judge allowed the State to admit the DVD of the interview, but did not redact the portions dealing with the former girlfriend. When Robinson subsequently took the stand, he attempted to explain his actions regarding Moore and McKinney and why he felt he had to plead

guilty. The COA affirmed the conviction 5-4, finding that the trial judge did err in admitting the DVD in its entirety, but found the error harmless since Robinson later testified about the incidents. Robinson was granted certiorari.

**HELD:** The COA was correct in finding error in the admission of the whole DVD. However, the Court rejected the COA's reasoning that Robinson's subsequent testimony cured the error. "Not only had the damage been done with respect to the jury being presented with inadmissible, prejudicial evidence, but also, Robinson's constitutional right to testify (or refrain therefrom) had been compromised."

==> "Based upon the admission of this evidence, Robinson was presented with the options of either taking the witness stand in an attempt to mitigate the prejudice caused, or foregoing that right and permitting the jury's consideration of such evidence without response. Subsequent testimony does not cure this error." The case was remanded for a new trial.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63299.pdf>

*Patton v. State*, No. 2008-KP-01699-SCT (Miss. May 13, 2010)

**CRIME:** False Pretenses

**SENTENCE:**

**COURT:** Marion County Circuit Court

**TRIAL JUDGE:** Hon. R.I. Prichard, III

**APPELLANT ATTORNEY:** Edgar Patton (Pro Se)

**APPELLEE ATTORNEY:** Jeffrey A. Klingfuss

**DISTRICT ATTORNEY:** Haldon J. Kittrell

**DISPOSITION:** Reversed and remanded. Dickinson, Justice, for the Court: Waller, C.J., Carlson, P.J., Randolph, Lamar, Kitchens, Chandler and Pierce, JJ., Concur. Graves, P.J., Concurs in Result Only. Kitchens, J., Specially Concurs with Separate Written Opinion Joined by Dickinson, J.; Graves, P.J., Joins in Part.

**ISSUES:** Whether the defendant knowingly and intelligently waived his Sixth Amendment right to counsel in proceeding pro se.

**FACTS:** Edgar Patton was indicted for the crime of false pretenses. He unsuccessfully represented himself in the trial court. On appeal, he claimed he did not knowingly and intelligently waive his right to counsel.

**HELD:** Although Patton never expressly waived counsel, the record was sufficient to indicate that was his intent. The question then becomes whether it was a knowingly and intelligent waiver. In this case, the judge failed to follow URCCC 8.05. The trial judge was required to advise Patton,

on the record, of his rights and the warnings set forth in the rule. The violation of right to counsel was a structural constitutional violation and is not subject to harmless error.

==> “Faced with the trial court's failure to comply with the requirements of Rule 8.05, and finding no evidence in the record that Patton was warned of the dangers and disadvantages of self-representation, we cannot conclude that Patton knowingly and intelligently waived his Sixth Amendment right to assistance of counsel.”

==> “The bench and bar are entitled to rely on this Court to apply the rules no less diligently to the courts than to the lawyers and litigants. And when a rule that we promulgated says a trial court ‘shall’ do a thing, justice and fairness demand that, absent extremely unusual circumstances, we either require trial courts to do it, or change the rule.”

### **KITCHENS, JUSTICE, SPECIALLY CONCURRING:**

==>Kitchens wrote separately to discuss what he believed to be a woefully inadequate indictment for false pretenses. The indictment was defective for failing to notify Patton that he was charged with a felony. “The indictment neither uses the essential adverb *feloniously* nor does it allege that the value of the property involved was \$500 or more.” Value is an essential element of the crime of felonious false pretense. This is a jurisdictional defect that cannot be cured with extrinsic proof. Further, the indictment did not allege that Patton made a representation that he knew to be false, that the victims relied on this misrepresentation to their detriment, or that the money which Patton obtained belonged to the victims.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63611.pdf>

*Underwood v. State*, No. 2000-DR-01335-SCT (Miss. May 13, 2010)

**CRIME:** PCR - Capital Murder

**SENTENCE:** Death Penalty

**COURT:** Madison County Circuit Court

**TRIAL JUDGE:** Hon John B. Toney

**APPELLANT ATTORNEY:** James W. Craig, Mark D. Jicka

**APPELLEE ATTORNEY:** Jason Davis, Marvin L. White

**DISPOSITION:** Leave to seek post-conviction relief denied. Kitchens, Justice, for the Court: Waller, C.J., Carlson and Graves, P.JJ., Dickinson, Randolph, Lamar, Chandler and Pierce JJ., Concur.

**ISSUES:** Whether the State withheld exculpatory information from the defendant at trial in violation of *Brady v. Maryland*.

**FACTS:** Justin Underwood was indicted for 1994 capital murder in the kidnaping and shooting death of Virginia Ann Harris. He was sentenced to death and his conviction and sentence were affirmed in 1998. His first PCR try was denied in 2005. Underwood now files a second PCR claiming the State withheld exculpatory evidence from his trial. Underwood claimed that the State failed to disclose that it had subjected the victim's husband to two polygraph tests about the circumstances surrounding the murder. Underwood submits that one of those tests indicated that the husband was being deceptive. Underwood claimed that this evidence was never turned over to the defense in discovery and that he only recently learned that the polygraph tests had been administered. Underwood's trial attorney submitted an affidavit stating that had he known of the results of those tests, he would have cross-examined Harris more aggressively regarding his claim that he was at work when the crime occurred.

**HELD:** Despite Underwood's claim that Harris was deceptive while being tested, the results of the polygraph examinations were "inconclusive." Furthermore, even if the State had disclosed to the defense all information related to Harris's polygraph tests, none of that evidence could have reached the jury since polygraphs are inadmissible.

==>Any claim that an "inconclusive" polygraph result could have led to evidence favorable to Underwood is highly speculative. Underwood confessed that he shot the victim, and the murder weapon was found in his car. Underwood's claim fails because there is no reasonable likelihood that the outcome of the trial would have been different if Underwood and his counsel had known of the husband's inconclusive polygraph tests.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDLList/..%5COpinions%5CCO63340.pdf>

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